IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21819 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ROOPLAL UDAJI BOLIWAL (MARWADI) - Petitioner(s)

Versus

DISTRICT MAGISTRATE & 3 - Respondent(s)

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Appearance :

MR PRAVIN GONDALIYA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 3.
MR JITENDRA MALKAN for Respondent(s) : 3,
M IA SHAIKH for Respondent(s) : 3,
GOVERNMENT PLEADER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1.Rooplal Udaji Boliwal (Marwadi), petitioner-detenu has filed this habeas corpus petition under Article 226 of

the Constitution of India with a prayer that this court may be pleased to quash and set aside the order of detention dated 11/10/2005 passed by the District Magistrate, Vadodara under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act-1980 (for short 'PBM Act'). Petition has been filed on 24/10/2005 and matter was placed before the Court on 26/10/2005. On that day, my brother Mr.Justice A.S.Dave has issued Rule which was returnable after four weeks. On behalf of respondents nos. 1, 2 and 4, Mr.L.R.Pujari, learned APP appears. On behalf of Respondent no.3, Mr.I.A.Shaikh appears. So with consent of the parties, the matter has been taken up for final hearing to this Court.

2. Though there are several grounds, Mr.Pravin Gondaliya, learned advocate for the petitioner has stated that only one ground is sufficient that when the authority has supplied the grounds in compilation, statement page-81 and page-82 for the same, which are supplied to the detenu is illegible. The learned advocate has submitted that this is failure on the part of the detaining authority to supply legible copies of the documents. The detenu has right under Article 22(5) of

the Constitution of India to make effective representation. If illegible copies of the documents are supplied to the detenu then his right to make representation is violated. For the same, the learned advocate for the petitioner has relied upon the judgment of the Division Bench of this Court (Coram:J.U.Mehta ad S.M.Soni, J.J.) in the case of Mulchandbhai Shobharajmal Ganvani v. The Secretary to Government of Gujarat and others, reported in 1991 (1) GLR 421 where the Division Bench of this Court has relied upon the judgment of Hon'ble Supreme Court in the case of Smt.Dharmishta Bhagat v. state of Karnataka, reported in 1989 Supp.(2) SCC 155 wherein the Hon'ble Supreme Court has observed that it is imperative that the detaining authority must serve grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention, and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make effective representation to the advisory Board and well as to the detaining authority. The Division Bench has thereafter held that hence failure on the part of the

detaining authority to supply legible copy of the said relevant documents to the detenu for making an effective representation infringed the detenu's right under Article 22(5) of the Constitution of India.

3.In my view in the present case, when I saw the said statements of the documents, it is illegible and Mr.L.R.Pujari, learned APP has also conceded to the same.

4.In view of the same petition is allowed. The order of detention dated 11/10/2005 passed by the District Magistrate, Vadodara is quashed and set aside. Rooplal Udaji Boliwal (Marwadi), detenue is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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